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PEPPER HAMILTON LLP			MEINECKE DIAZ, SUSANNA M	
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PITTSBURGH, PA 15219			3692	
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			09/14/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/775,079	ROBINSON ET AL.
	Examiner	Art Unit
	Susanna M. Diaz	3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 June 2009.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,4-15,17-33 and 35-45 is/are pending in the application.
 4a) Of the above claim(s) 17-31 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,2,4-15,32,33 and 35-45 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This final Office action is responsive to Applicant's amendment filed June 6, 2009.

Claims 3, 16, and 34 have been cancelled.

Non-elected claims 17-31 stand as withdrawn.

Claims 1, 2, 4-15, 32, 33, and 35-45 are presented for examination.

Response to Arguments

2. Applicant's arguments filed June 6, 2009 have been fully considered but they are not persuasive.

Applicant argues that neither Paul nor Ieshima discloses actually selecting an amount of a delay period. Applicant submits that "Paul merely teaches that all transactions processed through the ACH processing system involve an inherent, albeit variable, delay" and, in Ieshima, "[i]nstead of selecting a delay period, the user merely selects whether to defer settlement or to settle a transaction at a time determined by the system." (Page 11 of Applicant's response) Looking at paragraph 33 (page 8) of Applicant's specification, Applicant discusses various types of delay options, including fixed periods of delay that may be selected by a user. The last sentence of this paragraph states, "Of course, the consumer could always choose an option of payment processing without delay." In other words, the claimed "selecting an amount of a delay period to apply to the processing of the financial transaction" could allow a consumer to select a fixed delay period or no delay period at all (i.e., effectively a delay period of

zero). The art rejection explains that, while Paul does not explicitly disclose that the determining includes selecting an amount of a delay period to apply to the processing of the financial transaction, Ieshima allows a customer to select further deferment of payment in exchange for payment interest (abstract, ¶¶ 48, 49, 55). By Applicant's own admission (that, in Ieshima, "the user merely selects whether to defer settlement or to settle a transaction at a time determined by the system"), Ieshima does indeed address the limitation in question since (like the broadest reasonable interpretation, as supported by Applicant's specification) the claimed "selecting an amount of a delay period to apply to the processing of the financial transaction" could allow a consumer to select a fixed delay period or no delay period at all (i.e., effectively a delay period of zero). Ieshima allows a consumer to process a transaction without any delay period or with a fixed delay period (in exchange for interest to be paid), as seen in the abstract and paragraphs 48, 49, and 55 of Ieshima.

In conclusion, Applicant's arguments are not persuasive and the art rejection is maintained.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 4-11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paul et al. (U.S. Patent No. 7,104,443) in view of Ieshima et al. (US 2003/0078879 A1).

Paul discloses a method for conducting a biometrically-initiated financial transaction with delayed processing of payment, the method comprising:
[Claim 1] receiving information regarding a biometrically-initiated financial transaction involving a consumer and a merchant (col. 6, lines 1-19, 29-37; col. 10, lines 1-10);

determining whether to apply a delay to processing the financial transaction (col. 4, lines 40-56; col. 14, lines 45-51);

associating a payment instruction with the financial transaction, said payment instruction providing for a delay period in accordance with said determination (col. 4, lines 40-56; col. 14, lines 45-51);

delaying the processing of the financial transaction for a period of time in accordance with the delay period specified in the payment instruction (col. 4, lines 40-56; col. 14, lines 45-51); and

after the period of time has elapsed, initiating payment processing for the financial transaction (col. 4, lines 40-56; col. 14, lines 45-51);

[Claim 2] wherein said receiving comprises receiving a fingerprint (col. 6, lines 1-19, 29-37; col. 10, lines 1-10);

[Claim 4] wherein said initiating comprises initiating payment processing using the Automated Clearing House network (col. 2, lines 36-45; col. 3, lines 15-22; col. 4, lines

37-51; col. 10, lines 23-25; col. 12, lines 9-29; col. 14, lines 29-51; col. 16, lines 33-38);

[Claim 5] wherein said associating comprises automatically storing on at least one system database instructions for processing the financial transaction (Figs. 1-4; col. 4, lines 40-56; col. 14, lines 45-51);

[Claim 6] wherein said determining is based on one or more parameters (col. 4, lines 40-56 – The “float” can be a benefit for the cardholder; col. 12, line 59 through col. 13, line 14 and col. 17, lines 3-6 – Consumers must meet merchant-established qualifications in order to become cardholders; col. 14, lines 45-51);

[Claim 7] wherein said parameters include one or more of: the identity of the consumer; the date of a transaction; the time of a transaction; the identity of the payee; the location of a transaction; one or more products or services being purchased; the history of one or more consumer purchases, including purchases from multiple payees; the history of one or more consumer financial transactions; one or more records of membership in a shopping club; and one or more records of a consumer's affinity with a person, group or entity (col. 4, lines 40-56 – The “float” can be a benefit for the cardholder; col. 12, line 59 through col. 13, line 14 and col. 17, lines 3-6 – Consumers must meet merchant-established qualifications in order to become cardholders; col. 13, line 45 through col. 14, line 6; col. 14, lines 45-51);

[Claim 8] retrieving data about the consumer (col. 4, lines 40-56 – The “float” can be a benefit for the cardholder; col. 12, line 59 through col. 13, line 14 and col. 17, lines 3-6 – Consumers must meet merchant-established qualifications in order to become cardholders; col. 13, line 45 through col. 14, line 6; col. 14, lines 45-51);

[Claim 9] accessing data from a third party database (col. 2, lines 36-45; col. 3, lines 15-22; col. 4, lines 37-51; col. 10, lines 23-25; col. 12, lines 9-29; col. 14, lines 29-51; col. 16, lines 33-38 – Settling payments through the Automated Clearing House necessarily requires accessing data from a third party database; col. 8, lines 25-30 – Transaction settlement may involve accessing information through a third party);

[Claim 10] wherein evaluation of said parameters occurs locally (col. 2, lines 36-45 – The merchant handles much of the transaction processing locally; col. 4, lines 14-18, 40-56 – The “float” can be a benefit for the cardholder; col. 12, line 59 through col. 13, line 14 and col. 17, lines 3-6 – Consumers must meet merchant-established qualifications in order to become cardholders; col. 14, lines 45-51);

[Claim 11] charging a fee for said delay in processing, said fee being one or more of a fixed sum, a sum equal to a percentage of the financial transaction, and the accrual of interest (col. 4, line 41 through col. 5, line 9 – A consumer may surrender a monetary value in exchange for the MBD card or an extension of credit. The MBD card can give the cardholder the benefit of a “float”; col. 14, line 38 through col. 15, line 19 – Other fees associated with the MBD card, such as fees associated with transactions returned for non-sufficient funds, may also be charged to the cardholder);

[Claim 13] wherein said charged fee is collected by the merchant or by a third party (col. 3, lines 31-50; col. 4, line 41 through col. 5, line 9; col. 6, lines 15-28; col. 14, line 38 through col. 15, line 19).

Regarding claim 1, Paul discloses a determination of a delay period to apply to the processing of the financial transaction (col. 4, lines 40-56; col. 14, lines 45-51); however, Paul's delay period is set based on the type of payment made. Paul does not explicitly disclose that said determining includes selecting an amount of a delay period to apply to the processing of the financial transaction. However, Ieshima allows a customer to select further deferment of payment in exchange for payment interest (abstract, ¶¶ 48, 49, 55). This arrangement may provide the customer with added payment options for convenience. Both Paul and Ieshima handle payment options which can accommodate different periods of transaction processing delay; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Paul such that said determining includes selecting an amount of a delay period to apply to the processing of the financial transaction (as taught by Ieshima) in order to provide the customer with added payment options for convenience while making the customer fully aware of any fees associated with selecting a payment processing delay.

Paul discloses a method for conducting a financial transaction with delayed processing of payment, the method comprising:

[Claim 14] receiving information regarding a financial transaction involving a payor and a payee (col. 2, lines 36-45; col. 3, lines 15-22; col. 4, lines 37-51; col. 6, lines 1-19, 29-37; col. 10, lines 1-10, 23-25; col. 12, lines 9-29; col. 14, line 38 through col. 15, line 19; col. 16, lines 33-38);

determining whether to apply a delay to processing the financial transaction (col. 4, lines 40-56; col. 14, lines 45-51);

associating a payment instruction with the financial transaction, said payment instruction providing for a delay period in accordance with said determination (col. 4, lines 40-56; col. 14, lines 45-51);

delaying the processing of the financial transaction for a period of time in accordance with the delay period specified in the payment instruction (col. 4, lines 40-56; col. 14, lines 45-51); and

after the period of time has elapsed, initiating payment processing for the financial transaction (col. 4, lines 40-56; col. 14, lines 45-51);

[Claim 15] wherein said receiving comprises receiving information regarding a financial transaction involving a payor and a payee, the payee having completed all payee obligations under the financial transaction (col. 2, lines 36-45; col. 3, lines 15-22; col. 4, lines 37-51; col. 6, lines 1-19, 29-37; col. 10, lines 1-10, 23-25; col. 12, lines 9-29; col. 14, line 38 through col. 15, line 19; col. 16, lines 33-38).

Regarding claim 14, Paul discloses a determination of a delay period to apply to the processing of the financial transaction (col. 4, lines 40-56; col. 14, lines 45-51); however, Paul's delay period is set based on the type of payment made. Paul does not explicitly disclose that said determining includes selecting an amount of a delay period to apply to the processing of the financial transaction. However, Ieshima allows a customer to select further deferment of payment in exchange for payment interest

(abstract, ¶¶ 48, 49, 55). This arrangement may provide the customer with added payment options for convenience. Both Paul and Ieshima handle payment options which can accommodate different periods of transaction processing delay; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Paul such that said determining includes selecting an amount of a delay period to apply to the processing of the financial transaction (as taught by Ieshima) in order to provide the customer with added payment options for convenience while making the customer fully aware of any fees associated with selecting a payment processing delay.

5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Paul et al. (U.S. Patent No. 7,104,443) in view of Ieshima et al. (US 2003/0078879 A1), as applied to claim 11 above, and further in view of Official Notice [now admitted prior art].

[Claim 12] As per col. 4, line 41 through col. 5, line 9 of Paul, a consumer may surrender a monetary value in exchange for the MBD card or an extension of credit. The MBD card can give the cardholder the benefit of a "float." As seen in col. 14, line 38 through col. 15, line 19, other fees associated with the MBD card, such as fees associated with transactions returned for non-sufficient funds, may also be charged to the cardholder. However, Paul does not explicitly disclose the step of communicating said charged fee to the consumer electronically or by printed media. Official Notice is taken that it was old and well-known in the art of financial transactions at the time of Applicant's invention to disclose all transaction-related fees to an account-holder, either electronically or on paper; such disclosure is often required by law [now admitted prior

art]. Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Paul to explicitly perform the step of communicating said charged fee to the consumer electronically or by printed media in order to conform to federal and local laws that require full disclosure regarding transaction-related fees associated with a financial account.

6. Claims 32, 33, 35-43 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paul et al. (U.S. Patent No. 7,104,443) in view of Ieshima et al. (US 2003/0078879 A1), and further in view of Pare, Jr. et al. (U.S. Patent No. 5,870,723). [Claims 32, 33, 35-43, 45] Claims 32, 33, 35-43 and 45 recite limitations already addressed by the rejection of claims 1, 2, 4-11 and 13-15 above; therefore, the same rejection applies.

Furthermore, Paul does not explicitly disclose that the information received regards a *tokenless* biometrically-initiated financial transaction; however, Pare discloses a tokenless biometric transaction authorization system that allows transactions to be authorized through entry of a PIN and a biometric sample (abstract). The biometric authorization provides the benefit of effecting transactions more quickly and conveniently, as compared to systems using tokens (abstract; col. 5, lines 5-10). Since Pare presents a manner of improving the efficiency and convenience of Paul's system (which combines biometrics with its card-based transactions, as seen in column 6), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Paul such that the information received

regards a *tokenless* biometrically-initiated financial transaction in order to facilitate quicker and more convenient transactions.

Additionally, regarding claim 35, Paul discloses that said determining an amount of a delay period comprises receiving a selection of a payment option that defines the delay period to apply to the processing of the financial transaction (Paul: The delay is applied for customers using the MBD card (col. 4, lines 41-65). By processing a transaction using an MBD card versus a non-MBD card, it is determined that the MBD card and all of its benefits (including the processing delay) are to be implemented, including a 2-3 day delay period).

7. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Paul et al. (U.S. Patent No. 7,104,443) in view of Ieshima et al. (US 2003/0078879 A1), further in view of Pare, Jr. et al. (U.S. Patent No. 5,870,723), as applied to claim 32 above, and further in view of Official Notice [now admitted prior art].

[Claim 44] As per col. 4, line 41 through col. 5, line 9 of Paul, a consumer may surrender a monetary value in exchange for the MBD card or an extension of credit. The MBD card can give the cardholder the benefit of a “float.” As seen in col. 14, line 38 through col. 15, line 19, other fees associated with the MBD card, such as fees associated with transactions returned for non-sufficient funds, may also be charged to the cardholder. However, Paul does not explicitly disclose the step of communicating said charged fee to the consumer electronically or by printed media. Official Notice is taken that it was old and well-known in the art of financial transactions at the time of

Applicant's invention to disclose all transaction-related fees to an account-holder, either electronically or on paper; such disclosure is often required by law [now admitted prior art]. Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Paul to explicitly perform the step of communicating said charged fee to the consumer electronically or by printed media in order to conform to federal and local laws that require full disclosure regarding transaction-related fees associated with a financial account.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susanna M. Diaz/
Primary Examiner, Art Unit 3692